



AN ACT REQUIRING A PERSON NOMINATED OR APPOINTED AS A NEUTRAL ARBITRATOR TO DISCLOSE A CONFLICT OF INTEREST; PROVIDING FOR VACATING AN AWARD BECAUSE OF A FAILURE TO DISCLOSE A CONFLICT OF INTEREST; AND AMENDING SECTIONS 27-5-211 AND 27-5-312, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title -- neutral arbitrator's disclosure required. (1) This section may be cited as the "Fairness in Arbitration Act".

(2) An arbitration agreement, other than one contained in a collective bargaining agreement, entered into on or after October 1, 2009, must comply with the requirements of this section.

(3) A person who has been nominated or appointed as a neutral arbitrator for an arbitration proceeding shall disclose to each party all matters that could cause a person aware of the facts underlying a potential conflict of interest to have a reasonable doubt that the person would be able to act as a neutral or impartial arbitrator.

(4) In addition to any matters disclosed pursuant to subsection (3), the person nominated or appointed shall disclose:

(a) the existence, regarding the person, of any ground specified in 3-1-803 for disqualification of a judge;

(b) whether the person has been employed by a party to the arbitration proceeding within the last 5 years;

(c) (i) (A) the names of the parties to arbitration proceedings commenced after October 1, 2009, other than the pending proceeding, in which the person served or is serving as a party arbitrator and not a neutral arbitrator for any party to that proceeding or as an attorney for a party to that proceeding and the results of each of those proceedings that were arbitrated to conclusion; or

(B) beginning October 1, 2014, the names of the parties to all prior or current arbitration proceedings, other than the pending proceeding, within the last 5 years in which the person served or is serving as a party arbitrator and not a neutral arbitrator for any party to that proceeding or as an attorney for a party to that proceeding and the results of each of those proceedings that were arbitrated to conclusion;

(ii) regarding the information disclosed pursuant to subsection (4)(c)(i), as appropriate, the:

- (A) date of the arbitration award;
- (B) identification of the prevailing party;
- (C) names of the parties' attorneys; and
- (D) amount of monetary damages awarded, if any;

(d) (i) (A) the names of the parties to arbitration proceedings commenced after October 1, 2009, other than the pending proceeding, in which the person served or is serving as a party arbitrator and not a neutral arbitrator for any party to that proceeding or as an attorney for a party to that proceeding and the results of each of those proceedings that were arbitrated to conclusion; or

(B) beginning October 1, 2014, the names of the parties to all prior or current arbitration proceedings, other than the pending proceeding, within the last 5 years in which the person served or is serving as a neutral arbitrator and the results of each of those proceedings that were arbitrated to conclusion;

(ii) regarding the information disclosed pursuant to subsection (4)(d)(i), as appropriate, the:

- (A) date of the arbitration award;
 - (B) identification of the prevailing party;
 - (C) identification of the person and the party who selected the person to serve as a neutral arbitrator, if any;
 - (D) names of the parties' attorneys; and
 - (E) amount of monetary damages awarded, if any; and
- (e) any attorney-client relationship the person has or has had with a party or an attorney for a party to the arbitration proceeding within the last 5 years.

(5) In order to preserve confidentiality, it is sufficient for the purposes of subsections (4)(c) and (4)(d) for the person to identify any party who is not a party to the pending arbitration proceeding as "claimant" or "respondent" if that party is or was an individual and not a business or corporate entity.

(6) The person nominated or appointed as a neutral arbitrator shall make the disclosure required by this section in writing to all parties by serving a disclosure upon the parties within 10 days of any notice of the person's nomination or appointment. The disclosure must be served in accordance with Title 25, chapter 3, part 2.

(7) An arbitration proceeding does not include an arbitration proceeding pursuant to a collective bargaining agreement.

(8) This section does not apply to:

- (a) arbitration agreements that have been approved by the United States security and exchange commission pursuant to the Securities and Exchange Act of 1934; or
- (b) arbitrations conducted by the Montana bar association's voluntary fee arbitration program.

Section 2. Section 27-5-211, MCA, is amended to read:

"27-5-211. Appointment of arbitrators -- conflict of interest provisions applicable. ~~If~~ Except as provided in [section 1], if the arbitration agreement provides a method of appointment of arbitrators, this method shall ~~must~~ be followed. If no a method is not provided, the agreed method fails or for any reason cannot be followed, or an appointed arbitrator fails or is unable to act and his a successor has not been duly appointed, the district court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. A neutral arbitrator appointed by the district court on or after October 1, 2009, shall comply with the provisions of [section 1]."

Section 3. Section 27-5-312, MCA, is amended to read:

"27-5-312. Vacating an award. (1) Upon the application of a party, the district court shall vacate an award if:

- (a) the award was procured by corruption, fraud, or other undue means;
- (b) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
- (c) the arbitrators exceeded their powers;
- (d) the arbitrators refused to postpone the hearing upon sufficient cause being shown ~~therefor~~ or refused to hear evidence material to the controversy or otherwise ~~so~~ conducted the hearing, contrary to the provisions of 27-5-213, ~~as to prejudice in a manner that~~ substantially prejudiced the rights of a party; ~~or~~
- (e) there was no arbitration agreement and the issue was not adversely determined in proceedings under 27-5-115 and the party did not participate in the arbitration hearing without raising the objection; or
- (f) a neutral arbitrator failed to make a material disclosure required by [section 1]. An award may be vacated because of a material noncompliance with [section 1] no later than 90 days following discovery of the failure to disclose.

(2) The fact that the relief ~~was such that it~~ could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

(3) An application under this section must be made within 90 days after delivery of a copy of the award to the applicant, except that if it is predicated upon corruption, fraud, or other undue means, it must be made within 90 days after ~~such~~ the grounds are known or should have been known.

(4) In vacating the award on grounds other than those stated in subsection (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or, if the agreement does not provide a method of selection, by the court in accordance with 27-5-211 or, if the award is vacated on grounds set forth in subsection (1)(c) or (1)(d), the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with 27-5-211. The time within which the agreement requires the award to be made is applicable to the rehearing and commences on the date of the order for rehearing.

(5) If the application to vacate is denied and ~~no~~ a motion to modify or correct the award is not pending, the court shall confirm the award."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 27, chapter 5, part 1, and the provisions of Title 27, chapter 5, part 1, apply to [section 1].

- END -

I hereby certify that the within bill,
HB 0322, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2009.

President of the Senate

Signed this _____ day
of _____, 2009.

HOUSE BILL NO. 322

INTRODUCED BY BLEWETT, K. PETERSON, SHOCKLEY

AN ACT REQUIRING A PERSON NOMINATED OR APPOINTED AS A NEUTRAL ARBITRATOR TO DISCLOSE A CONFLICT OF INTEREST; PROVIDING FOR VACATING AN AWARD BECAUSE OF A FAILURE TO DISCLOSE A CONFLICT OF INTEREST; AND AMENDING SECTIONS 27-5-211 AND 27-5-312, MCA.